

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

EARL THURMAN,)	
)	
Plaintiff,)	
)	Civil Action No. 20-1929
v.)	Judge Nora Barry Fischer
)	Magistrate Judge Patricia L. Dodge
MICHAEL ZAKEN, et al.)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, this 1st day of March, 2022, after Plaintiff Earl Thurman was granted in forma pauperis status and his Complaint was filed in this matter, (Docket No. 10), Defendants Michael Zaken and Mr. Buzas filed a Motion to Dismiss, (Docket No. 24), and Brief in Support, (Docket No. 25), Plaintiff filed a Response in Opposition, (Docket No. 30), and a Report and Recommendation was filed by United States Magistrate Judge Patricia L. Dodge on January 28, 2022 recommending that the Defendants' Motion to Dismiss be granted and that Plaintiff's Fourteenth Amendment claims be dismissed, with prejudice, his Eighth Amendment claims as to COVID be dismissed, without prejudice, and otherwise, with prejudice, and his First Amendment retaliation claims be dismissed, without prejudice, and that he be granted leave to amend such claims, as well as directing any objections to be filed within 14 days, and no objections having been filed as of the date of this Order, and upon independent review of the record and consideration of the Magistrate Judge's Report and Recommendation, which is ADOPTED as the opinion of this Court,

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss [24] is GRANTED;

IT IS FURTHER ORDERED that Plaintiff's Complaint [10] is DISMISSED and his specific claims are dismissed, as follows:

1. Plaintiff's Fourteenth Amendment claim is dismissed, with prejudice;
2. Plaintiff's Eighth Amendment claim is dismissed, without prejudice and leave to amend, to the extent that it is based on allegations related to COVID, and otherwise dismissed, with prejudice; and,
3. Plaintiff's First Amendment retaliation claim is dismissed, without prejudice and leave to amend;

IT IS FURTHER ORDERED that Plaintiff shall file an Amended Complaint curing the deficiencies outlined in the Report and Recommendation, which has been adopted as the Opinion of the Court, by **April 1, 2022**;

FINALLY, this matter is referred back to U.S. Magistrate Judge Dodge for further pretrial proceedings.

s/ Nora Barry Fischer
Nora Barry Fischer
Senior U.S. District Judge

cc/ecf: United States Magistrate Judge Patricia L. Dodge

All counsel of record.

cc: EARL THURMAN
DL- 5818
SCI GREENE
175 PROGRESS DRIVE
WAYNESBURG, PA 15370
(via first class mail)